SHER TREMONTE LLP

January 3, 2024

BY ECF

Hon. LaShann DeArcy Hall
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Trooper 1 v. NYSP et al.*, 22-cv-893 (LDH) (TAM)

Dear Judge DeArcy Hall:

We represent former Governor Andrew Cuomo and write concerning his partial motion to dismiss, which was fully briefed and filed on September 2, 2022. ECF No. 45. As we argued in that Motion, the retaliation claim against Governor Cuomo is not legally viable because (i) Governor Cuomo was not Plaintiff's employer at the time of the alleged retaliatory conduct, and (ii) any alleged conduct was a reasonable defensive measure to Plaintiff's claims. *See* ECF No. 45-1 at 13-21.

Plaintiff's counsel recently confirmed during a discovery conference that the <u>only</u> alleged adverse act that forms the basis for Plaintiff's retaliation claim against Governor Cuomo is the February 17, 2022 tweet by Richard Azzopardi commenting on Plaintiff's lawsuit. *See* Dec. 12, 2023 Conf. Tr. at 64:8-10 ("The discovery in relation to retaliation . . . as to Trooper 1 is the tweet. That is the adverse act."); 65:2-3 ("The retaliatory act is the tweet."). In that single tweet responding to Plaintiff's original complaint, Mr. Azzopardi wrote that the Wigdor law firm "is widely known to use the press to extort settlements" and that "Gov. Cuomo will fight every attempt at cheap cash extortions." *See* ECF No. 45-1 at 9. As we argued in our Motion, a tweet by a non-employer concerning a lawsuit is a reasonable defensive measure that, as a matter of law, cannot support a claim for unlawful retaliation. *See id.* at 13-21.

Respectfully submitted,

/s/ Theresa Trzaskoma

Theresa Trzaskoma

Attachment

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK (BROOKLYN)

----------------------------:
                            :
TROOPER 1,   : Case No.: 22-cv-0893
                            :
              Plaintiff, :   Brooklyn, New York
                            : December 12, 2023
       v.   : 3:08 p.m. - 5:18 p.m.
                            :
NEW YORK STATE POLICE,   :
et al.,   :
              Defendants.:
----------------------------:

TRANSCRIPT AND STATUS CONFERENCE HEARING
BEFORE THE HONORABLE TARYN A. MERKL
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: WIGDOR LLP
                        BY: Valdi Licul, Esq.
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                        New York, NY 10003

For Defendant: GLAVIN PLLC
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                        156 West 56th Street - Suite 2004
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APPEARANCES CONTINUED

For Defendant: MORVILLO, ABRAMOWITZ, GRAND, IASON
Melissa DeRosa   & ANELLO P.C.
Richard Azzopardi   BY: Catherine Foti, Esq.
                     565 Fifth Avenue
                     New York, New York 10017

1   including allegations with regard to everybody who

2   is discussed at length in the Attorney General's

3   report.

4   Although your theory of the case as to

5   Trooper 1 may be narrowly tailored vis-à-vis this

6   tweet activity, Ms. Glavin is clearly correct, that

7   the retaliation section, at least the factual

8   specifications in your retaliation section, pertain

9   to significantly longer volume of activities

10   relating to everybody else.

11   Mr. Licul, by determining to include all of

12   this, it is much more lengthy than a simple one hit

13   tweet type of retaliation.

14   MR. LICUL: The adverse actions in relation

15   to Trooper 1 --

16   THE COURT: I understand the law, sir, but

17   you have paragraph upon paragraph in your complaint

18   explaining how her fears were justified because of

19   all this prior history.

20   MR. LICUL: Correct. And that is an

21   anticipation of the defendants' arguing that she did

22   not complain, an anticipation of a Faragher-Ellerth

23   defense, which is that she could not take

24   appropriate measures to complain about the

25   discrimination when it occurred, and that's what

1 that's for.

2   THE COURT: Right. But given --

3   MR. LICUL: That's --

4   THE COURT: Given the nature of the way the

5 complaint is drafted, I don't think it can be fairly

6 characterized that the discovery relevant to

7 retaliation is one tweet.

8   MR. LICUL: The discovery in relation to

9 retaliation as to the -- as to Trooper 1 is the

10 tweet. That is the adverse act.

11   THE COURT: I understand.

12   MR. LICUL: The reason she did not complain

13 was because of the culture of fear by the governor

14 and in the governor's chambers about people -- for

15 people who would complain about him, but that's not

16 the adverse act.

17   THE COURT: I understand. I get it.

18   MR. LICUL: So -- all right.

19   THE COURT: But it's --

20   MR. LICUL: I just wanted to make clear

21 because I thought that the allegation was -- or the

22 characterization was that her allegations of

23 retaliation related to other things that he --

24   THE COURT: They do. Your complaint

25 relates to a number of other things in connection

1   with how she experienced the retaliatory act.

2   MR. LICUL: The retaliatory act is the

3   tweet.

4   THE COURT: I know, but because of her

5   lens, because of her experience, to the extent she

6   knew any of this stuff, you're saying that -- I

7   mean, did she know all of this stuff before --

8   MR. LICUL: No. It's -- but it --

9   THE COURT: -- when she just chose not to

10 complain?

11   MR. LICUL: It speaks to the culture of the

12 place. And I was -- as I said, Your Honor, it

13 doesn't go to the retaliatory act against her by the

14 governor. What it does is it goes to the

15 explanation for why she did not complain --

16   THE COURT: But she didn't know any of

17 these things at the time?

18   MR. LICUL: She knew about -- I mean, they

19 could depose her. They had a chance to depose her.

20 They canceled it the day before. And they can ask

21 her about that, about the culture of the place.

22   THE COURT: I understand. But in terms of

23 the precatory allegations that lead up to the

24 tweet --

25   MR. LICUL: Right.

1   THE COURT: -- and your position that her

2   fears were justified because of all of these prior

3   acts, did she know?

4   MR. LICUL: She may have known some of

5   them. I don't know, Your Honor. But --

6   THE COURT: Fair enough. Fair enough.

7   MR. LICUL: But all I'm saying is that that

8   is the culture of the place. The Faragher-Ellerth

9   defense, at least under federal law, is an

10   affirmative defense, and they would have to prove

11   that there is a mechanism for her to complain and

12   she didn't.

13   THE COURT: Right. I don't think anybody

14   is confused about which action you're saying is the

15   basis for your retaliation claim, but I think what

16   has been confused in the conversation is how you

17   anticipate proving the culture surrounding the

18   allegedly retaliatory act. So it's all part and

19   parcel of the retaliation claim.

20   MR. LICUL: No, I agree with that.

21   THE COURT: I think it's just --

22   MR. LICUL: I just --

23   THE COURT: -- shorthand.

24   MR. LICUL: I agree with that. I just

25   wanted to clarify what the exact retaliation against